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18 PROTECTION ALLIANCE

19 UNITED STATES DISTRICT COURT  
20 EASTERN DISTRICT OF CALIFORNIA

21 CALIFORNIA SPORTFISHING  
22 PROTECTION ALLIANCE, a non-profit  
23 corporation;  
24 Plaintiff,  
25 vs.  
26 CASTLE & KING, INC., a corporation.  
27 Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

28 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and  
through its counsel, hereby alleges:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the  
Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or  
“the Act”). This Court has subject matter jurisdiction over the parties and the subject matter  
of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28

1 U.S.C. § 1331 (an action arising under the laws of the United States).

2 2. On or about January 20, 2009, Plaintiff CSPA provided notice of the  
3 Defendant's violations of the Act, and of its intention to file suit against the Defendant, to the  
4 Administrator of the United States Environmental Protection Agency ("EPA"); the  
5 Administrator of EPA Region IX; the Executive Director of the State Water Resources  
6 Control Board ("State Board"); the Executive Officer of the Regional Water Quality Control  
7 Board, Central Valley Region ("Regional Board"); and to Defendant, as required by the Act,  
8 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's notice letter is attached as  
9 Exhibit A, and is incorporated by reference.

10 3. More than sixty days have passed since notice was served on Defendant and  
11 the state and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that  
12 neither the EPA nor the State of California has commenced or is diligently prosecuting a  
13 court action to redress the violations alleged in this complaint. This action is not barred by  
14 any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

15 4. Venue is proper in the Eastern District of California pursuant to Section  
16 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
17 within this judicial district. Pursuant to Local Rule 3-120(d), intradistrict venue is proper in  
18 Sacramento, California because the source of the violation is located within Solano County,  
19 California.

20 **II. INTRODUCTION**

21 5. This complaint seeks relief for Defendant's discharges of polluted storm water  
22 from Defendant's ready mix concrete and aggregate facility into the waters of the United  
23 States in violation of the Act and the State of California's General Permit for industrial storm  
24 water discharges, State Water Resources Control Board ("State Board") Water Quality Order  
25 No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality  
26 Order No. 97-03-DWQ, National Pollutant Discharge Elimination System ("NPDES")  
27 General Permit No. CAS000001 (hereinafter "General Permit" or "Permit"). Defendant's  
28 violations of the filing, monitoring, reporting, discharge and management practice

1 requirements, and other procedural and substantive requirements of the General Permit and  
2 the Act are ongoing and continuous.

3 6. The failure on the part of persons and facilities such as Defendant and its  
4 industrial facility to comply with the General Permit is recognized as a significant cause of  
5 the continuing decline in water quality of the Sacramento River, the Sacramento-San Joaquin  
6 Delta (the "Delta") and other area receiving waters. The general consensus among regulatory  
7 agencies and water quality specialists is that storm water pollution amounts to more than half  
8 the total pollution entering the aquatic environment each year. With every rainfall event,  
9 millions of gallons of polluted rainwater originating from industries in the Vacaville area  
10 pour into the Sacramento River and the Delta. In most areas of Solano County, storm water  
11 drains completely untreated through the storm drain system directly to the Sacramento River,  
12 the Delta and other receiving waters.

13 7. Water quality in the Delta continues to decline. Data gathered by CalFed, a  
14 coalition of 15 state and federal agencies analyzing water allocation issues, has confirmed  
15 that the Delta is a heavily polluted water body. The entire Delta, all of its major tributaries,  
16 and a number of urban waterways in and around the City of Vacaville have all been  
17 identified as impaired water bodies under Section 303(d) of the Clean Water Act. Finally,  
18 the United States Geological Survey, in its National Water Quality Assessment, has  
19 concluded that the Sacramento River basin is one of the most degraded and polluted basins in  
20 the entire country.

21 **III. PARTIES**

22 8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
23 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of  
24 California with offices in Woodland, California and Stockton, California. CSPA has  
25 approximately 2000 members who live and recreate in and around waters of the State of  
26 California, including the Sacramento River and the Sacramento-San Joaquin River Delta.  
27 CSPA is dedicated to the preservation, protection, and defense of the environment, the  
28 wildlife and the natural resources of all waters of California. To further these goals, CSPA

1 actively seeks federal and state agency implementation of the Act and other laws and, where  
2 necessary, directly initiates enforcement actions on behalf of itself and its members.

3 9. Members of CSPA reside in and around the Delta and use and enjoy the  
4 Sacramento River and the Delta for recreational and other activities. Members of CSPA use  
5 and enjoy the waters into which Defendant has caused, are causing, and will continue to  
6 cause, pollutants to be discharged. Members of CSPA use those areas to fish, sail, boat,  
7 kayak, swim, birdwatch, view wildlife and engage in scientific study including monitoring  
8 activities, among other things. Defendant's discharges of polluted storm water impair each  
9 of those uses. Thus, the interests of CSPA's members have been, are being, and will  
10 continue to be adversely affected by Defendant's failure to comply with the Clean Water Act  
11 and the General Permit. The relief sought herein will redress the harms to Plaintiff caused by  
12 Defendant's activities.

13 10. Continuing commission of the acts and omissions alleged above will irreparably  
14 harm Plaintiff and the citizens of the State of California, for which harm they have no plain,  
15 speedy or adequate remedy at law.

16 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant Castle  
17 & King, Inc. is a business organized under the laws of the State of California.

18 **IV. STATUTORY AND REGULATORY BACKGROUND**

19 12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
20 pollutant into waters of the United States, unless such discharge is in compliance with  
21 various enumerated sections of the Act. Among other things, Section 301(a) prohibits  
22 discharges not authorized by, or in violation of, the terms of an NPDES permit issued  
23 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

24 13. Section 402(p) of the Act establishes a framework for regulating municipal and  
25 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States  
26 with approved NPDES permit programs are authorized by Section 402(p) to regulate  
27 industrial storm water discharges through individual permits issued to dischargers and/or  
28 through the issuance of a single, statewide general permit applicable to all industrial storm

1 water dischargers. 33 U.S.C. § 1342.

2 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the  
3 U.S. EPA has authorized California's State Board to issue NPDES permits including general  
4 NPDES permits in California.

5 15. The State Board elected to issue a statewide general permit for industrial  
6 discharges. The State Board issued the General Permit on or about November 19, 1991,  
7 modified the General Permit on or about September 17, 1992, and reissued the General  
8 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33  
9 U.S.C. § 1342(p).

10 16. In order to discharge storm water lawfully in California, industrial dischargers  
11 must comply with the terms of the General Permit or have obtained and complied with an  
12 individual NPDES permit. 33 U.S.C. §1311(a).

13 17. The General Permit contains certain absolute prohibitions. Discharge  
14 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials  
15 other than storm water ("non-storm water discharges"), which are not otherwise regulated by  
16 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the  
17 General Permit prohibits storm water discharges and authorized non-storm water discharges  
18 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water  
19 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or  
20 ground water that adversely impact human health or the environment. Receiving Water  
21 Limitation C(2) of the General Permit prohibits storm water discharges that cause or  
22 contribute to an exceedance of any applicable water quality standards contained in a  
23 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

24 18. The General Permit requires dischargers to eliminate all non-storm water  
25 discharges to storm water conveyance systems other than those specifically set forth in  
26 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth  
27 in Special Condition D(1)(b).

28 19. In addition to absolute prohibitions, the General Permit contains a variety of

1 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
2 or having the potential to discharge, storm water associated with industrial activity that have  
3 not obtained an individual NPDES permit must apply for coverage under the State's General  
4 Permit by filing a Notice of Intent To Comply ("NOI"). The General Permit requires  
5 existing dischargers to have filed their NOIs before March 30, 1992. Effluent Limitation  
6 B(3) of the Industrial Storm Water Permit requires dischargers to reduce or prevent  
7 pollutants in their storm water discharges through implementation of Best Available  
8 Technology Economically Achievable ("BAT") for toxic and nonconventional pollutants and  
9 Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. BAT  
10 and BCT include both nonstructural and structural measures. General Permit, Section A(8).

11 20. EPA has established the following benchmark values for determining whether  
12 a facility discharging industrial storm water has properly implemented BAT and BCT: pH –  
13 6.0-9.0 standard units; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and iron  
14 – 1.0 mg/L. The State Board has further proposed a benchmark value for specific  
15 conductance of 200  $\mu$ mho/cm. These benchmark values are the pollutant concentrations  
16 above which EPA has determined represent a level of concern. 65 Fed. Reg. 64766. The  
17 level of concern is a concentration at which a storm water discharge could potentially impair,  
18 or contribute to impairing, water quality or affect human health from ingestion of water or  
19 fish. *Id.* The benchmark values provide an appropriate level to determine whether a  
20 facility's storm water pollution prevention measures are successfully implemented. *Id.* at  
21 64766-67.

22 21. Dischargers must develop and implement a Storm Water Pollution Prevention  
23 Plan ("SWPPP"). The SWPPP must comply with the BAT and BCT standards. The General  
24 Permit requires that an initial SWPPP have been developed and implemented before October  
25 1, 1992. The SWPPP must, among other requirements, identify and evaluate sources of  
26 pollutants associated with industrial activities that may affect the quality of storm and non-  
27 storm water discharges from the facility and identify and implement site-specific best  
28 management practices ("BMPs") to reduce or prevent pollutants associated with industrial

1 activities in storm water and authorized non-storm water discharges (Section A(2)). The  
2 SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The  
3 SWPPP must include: a description of individuals and their responsibilities for developing  
4 and implementing the SWPPP (Section A(3)); a site map showing the facility boundaries,  
5 storm water drainage areas with flow pattern and nearby waterbodies, the location of the  
6 storm water collection, conveyance and discharge system, structural control measures,  
7 impervious areas, areas of actual and potential pollutant contact, and areas of industrial  
8 activity (Section A(4)); a list of significant materials handled and stored at the site (Section  
9 A(5)); a description of potential pollutant sources including industrial processes, material  
10 handling and storage areas, dust and particulate generating activities, and a description of  
11 significant spills and leaks, a list of all non-storm water discharges and their sources, and a  
12 description of locations where soil erosion may occur (Section A(6)). The SWPPP must  
13 include an assessment of potential pollutant sources at the Facility and a description of the  
14 BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water  
15 discharges and authorized non-storm water discharges, including structural BMPs where  
16 non-structural BMPs are not effective (Section A(7), (8)). The SWPPP must be evaluated to  
17 ensure effectiveness and must be revised where necessary (Section A(9),(10)).

18 22. Receiving Water Limitation C(3) requires a discharger to prepare and submit a  
19 report to the Regional Board describing changes it will make to its current BMPs in order to  
20 prevent or reduce any pollutant in its storm water discharges that is causing or contributing to  
21 an exceedance of water quality standards. Once approved by the Regional Board, the  
22 additional BMPs must be incorporated into the Facility's SWPPP. The report must be  
23 submitted to the Regional Board no later than 60-days from the date the discharger first  
24 learns that its discharge is causing or contributing to an exceedance of an applicable water  
25 quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's  
26 Standard Provisions also requires dischargers to report any noncompliance. *See also*  
27 Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm  
28 water controls including the preparation of an evaluation report and implementation of any

1 additional measures in the SWPPP to respond to the monitoring results and other inspection  
2 activities.

3 23. The General Permit requires dischargers commencing industrial activities  
4 before October 1, 1992 to develop and implement an adequate written Monitoring and  
5 Reporting Program no later than October 1, 1992. Existing facilities covered under the  
6 General Permit must implement all necessary revisions to their monitoring programs no later  
7 than August 1, 1997.

8 24. As part of their monitoring program, dischargers must identify all storm water  
9 discharge locations that produce a significant storm water discharge, evaluate the  
10 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
11 measures set out in the SWPPP are adequate and properly implemented. Dischargers must  
12 then conduct visual observations of these discharge locations for at least one storm per month  
13 during the wet season (October through May) and record their findings in their Annual  
14 Report. Dischargers must also collect and analyze storm water samples from at least two  
15 storms per year. Section B(5)(a) of the Industrial Storm Water Permit requires that  
16 dischargers "shall collect storm water samples during the first hour of discharge from (1) the  
17 first storm event of the wet season, and (2) at least one other storm event in the wet season.  
18 All storm water discharge locations shall be sampled." Section B(5)(c)(i) requires  
19 dischargers to sample and analyze during the wet season for basic parameters such as pH,  
20 total suspended solids ("TSS"), specific conductance, and total organic content ("TOC") or  
21 oil and grease, certain industry-specific parameters, and toxic chemicals and other pollutants  
22 likely to be in the storm water discharged from the facility. Dischargers must also conduct  
23 dry season visual observations to identify sources of non-storm water pollution.

24 25. Section B(14) of the General Permit requires dischargers to submit an Annual  
25 Report by July 1 of each year to the executive officer of the relevant Regional Board. The  
26 Annual Report must be signed and certified by an appropriate corporate officer. Sections  
27 B(14), C(9), (10). Section A(9)(d) of the Industrial Storm Water Permit requires the  
28 discharger to include in their annual report an evaluation of their storm water controls,



1 including certifying compliance with the Industrial Storm Water Permit. *See also* Sections  
2 C(9) and (10) and B(14).

3 26. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement  
4 actions against any “person,” including individuals, corporations, or partnerships, for  
5 violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33  
6 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is  
7 authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of  
8 civil penalties of \$27,500 per day (violations from January 30, 1997 through March 15, 2004,  
9 and \$32,500 per day (violations after March 15, 2004) pursuant to Sections 309(d) and 505 of  
10 the Act, 33 U.S.C. §§ 1319(d) and 1365 and 40 C.F.R. §§ 19.1 - 19.4. Declaratory relief is  
11 authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in case of actual  
12 controversy and further necessary relief based on such a declaration).

13 27. The Regional Board has established water quality standards for the Sacramento  
14 River and the Delta in the Water Quality Control Plan for the Sacramento River and San  
15 Joaquin River Basins, generally referred to as the Basin Plan.

16 28. The Basin Plan includes a narrative toxicity standard which states that “[a]ll  
17 waters shall be maintained free of toxic substances in concentrations that produce detrimental  
18 physiological responses in human, plant, animal, or aquatic life.”

19 29. The Basin Plan establishes a standard for electrical conductivity in the Delta of  
20 0.7 mmhos/cm from April 1 through August 31 and 1.0 mmhos/cm from September 1  
21 through March 31.

22 30. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor  
23 raised above 8.5.”

24 31. The Basin Plan provides that “[a]t a minimum, water designated for use as  
25 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
26 constituents in excess of the maximum contaminant levels (MCLs).” The Delta has also  
27 been designated for use in domestic and municipal supply.

28 32. EPA has established numeric water quality standards for priority toxic

1 pollutants. These include, but are not limited to, the following pollutants: copper – 0.009  
2 mg/L (hardness of 100 mg/L), lead – 0.0025 (hardness of 100mg/l); and zinc – 0.120 mg/L  
3 (hardness of 100 mg/l). EPA has also established a numeric water quality criterion for  
4 aluminum of 0.087 mg/L (4-day average) and 0.75 mg/L (1-hour maximum).

5 **V. STATEMENT OF FACTS**

6 33. Defendant operates a facility located at 105 Aegean Way, in Vacaville,  
7 California (the “Facility”). The Facility is engaged in the manufacturing of ready mix  
8 concrete and aggregate materials. The Facility falls within the Standard Industrial  
9 Classification (“SIC”) for “Ready-mixed Concrete”, which is SIC Code 3273. On March 30,  
10 1992, Defendant filed an NOI and became subject to the terms of the General Permit.

11 34. The Facility collects and discharges storm water from its approximately 2-acre  
12 industrial site through at least four discharge points to the local storm water conveyance  
13 system and/or Alamo Creek, all of which ultimately drain to Cache Slough, which is tributary  
14 to the Sacramento River and the Delta.

15 35. The main industrial activities at the Facility relate to receiving, storing and  
16 handling aggregate materials for the manufacture of ready-mix concrete. Other activities at  
17 the Facility include the use, storage, and maintenance of heavy machinery and motorized  
18 vehicles, including trucks used to haul materials to and from the Facility. Nearly all of the  
19 Facility surfaces are impervious, consisting of areas that are either paved or are covered by  
20 structures. The Facility includes at least two outfalls that discharge storm water from the  
21 Facility.

22 36. Since at least as early as 1995, Defendant has taken samples or arranged for  
23 samples to be taken of storm water discharges at the Facility. The sample results were  
24 reported in the Facility’s Annual Reports submitted to the Regional Board. Defendant  
25 certified its annual reports pursuant to Sections A and C of the General Permit.

26 37. Since at least January 20, 2004, Defendant has known that it discharges TSS,  
27 Oil & Grease and iron in excess of EPA Benchmark Values in storm water from the Facility.  
28 Since at least January 20, 2004, Defendant has known that these discharges have a pH level

1 above 9.0 standard units.

2 38. The levels of TSS, Oil & Grease, iron and pH detected by Defendant in the  
3 storm water discharged from its Facility have regularly exceeded the benchmark values for  
4 these pollutant parameters established by the EPA. This has occurred repeatedly over the  
5 past five years (See Exhibit A hereto).

6 39. These monitoring results were reported in Defendant's Annual Reports  
7 submitted to the Regional Board. Form 5 of those Annual Reports is supposed to include  
8 Defendant's evaluation of the adequacy of best management practices ("BMPs") at the  
9 Facility. Defendant did not include any discussion of any exceedances of EPA's benchmark  
10 values or other water quality criteria detected in its storm water in any of its Annual Reports  
11 submitted since at least 2004.

12 40. Information available to Plaintiff indicates that potential pollutants from  
13 Defendant's industrial processes at the Facility include aluminum, arsenic, chemical oxygen  
14 demand, chromium, copper, manganese, nickel, nitrate+nitrite, and zinc. Defendant has  
15 failed to properly monitor all of these pollutants in its storm water discharge, as required by  
16 Section B(5)(c)(i) of the General Permit, since at least January 20, 2009.

17 41. Defendant has prepared an inadequate SWPPP for the Facility, and has  
18 repeatedly failed to revise the SWPPP in a manner setting forth site-specific best  
19 management practices that are adequate to achieve BAT or BCT at the Facility.

20 42. Information available to Plaintiff indicates that as a result of Defendant's  
21 failure to evaluate the effectiveness of its existing BMPs, its failure to implement BAT and  
22 BCT at the Facility, its failure to fully monitor the quality of storm water discharges from the  
23 Facility and its failure to maintain an adequate SWPPP and monitoring program for the  
24 Facility, storm water containing pollutants harmful to fish, plant and bird life, and human  
25 health is being discharged during every rain event from the Facility.

26 43. Discharges from the Facility's four discharge points flow to the local storm  
27 water conveyance system and/or Alamo Creek, which ultimately drains to Cache Slough,  
28 which is tributary to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the

1 Delta"). Alamo Creek, Cache Slough, the Sacramento River, the Delta, and each of the  
2 tributaries to these water bodies are waters of the United States within the meaning of the  
3 Clean Water Act.

4 44. Plaintiff is informed and believes, and thereupon alleges, that Defendant's  
5 discharges of storm water is polluted by iron, pH, TSS, Oil & Grease and specific conductance  
6 at levels that cause or contribute to violations of applicable water quality standards in Alamo  
7 Creek, Cache Slough, the Sacramento River and the Delta.

8 45. Information available to Plaintiff indicates that Defendant has not submitted  
9 any reports pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming  
10 aware of levels in its storm water exceeding the EPA Benchmark values or applicable water  
11 quality standards. Based on Plaintiff's review of available documents, Defendant has been  
12 aware of high levels of these pollutants for over five years. Information available to Plaintiff  
13 indicates that Defendant has not filed any reports describing the Facility's noncompliance  
14 with the General Permit pursuant to Section C(11)(d) of the General Permit.

15 46. Information available to Plaintiff indicates that Defendant has not fulfilled the  
16 requirements set forth in the General Permit for discharges from the Facility due to the  
17 continued discharge of contaminated storm water.

18 47. Information available to Plaintiff indicates the continued existence of unlawful  
19 storm water and non-storm water discharges at the Facility.

20 **VI. CLAIMS FOR RELIEF**

21 **FIRST CAUSE OF ACTION**  
22 **Discharges of Contaminated Storm Water**  
23 **in Violation of Permit Conditions and the Act**  
**(Violations of 33 U.S.C. §§ 1311(a), 1342)**

24 48. Plaintiff realleges and incorporates Paragraphs 1-47, inclusive, as if fully set  
25 forth herein.

26 49. Discharge Prohibition A(2) of the General Permit requires that storm water  
27 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
28 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the

1 General Permit require that storm water discharges and authorized non-storm water discharges  
2 shall not adversely impact human health or the environment, and shall not cause or contribute  
3 to a violation of any water quality standards contained in a Statewide Water Quality Control  
4 Plan or the applicable Regional Board's Basin Plan. Discharge Prohibition A(1) of the General  
5 Permit prohibits the direct or indirect discharge of materials other than storm water, which  
6 are not otherwise regulated by an NPDES permit, to waters of the United States.

7 50. Plaintiff is informed and believes, and thereupon alleges, that since at least 1995  
8 Defendant has been discharging polluted storm water from the Facility directly to the local  
9 storm water conveyance system, Alamo Creek, Cache Slough, the Sacramento River and the  
10 Delta in violation of the General Permit.

11 51. During every rain event, rainwater flowing over exposed materials and  
12 accumulated pollutants at the Facility becomes contaminated with pollutants and flows wholly  
13 untreated from the Facility into the storm drain system. This contaminated storm water flows  
14 through the storm drain system and is ultimately discharged to the Delta.

15 52. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
16 contaminated storm water are causing pollution and contamination of the waters of the United  
17 States in violation of Discharge Prohibition A(2) of the General Permit.

18 53. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
19 of contaminated storm water are adversely affecting human health and the environment in  
20 violation of Receiving Water Limitation C(1) of the General Permit.

21 54. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
22 contaminated storm water are contributing to the violation of the applicable water quality  
23 standards in the Statewide Water Quality Control Plan and/or the applicable Regional Board's  
24 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

25 55. Every day since January 20, 2004 that Defendant has discharged and continues to  
26 discharge polluted storm water and non-storm water from the Facility in violation of the  
27 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
28 1311(a). These violations are ongoing and continuous.

1 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

2 **SECOND CAUSE OF ACTION**

3 **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan**  
4 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

5 56. Plaintiff realleges and incorporates Paragraphs 1-55, as if fully set forth herein.

6 57. Section A and Provision E of the General Permit requires dischargers of storm  
7 water associated with industrial activity to develop and implement an adequate Storm Water  
8 Pollution Prevention Plan ("SWPPP") no later than October 1, 1992.

9 58. Defendant has failed to develop and implement an adequate SWPPP for the  
10 Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the  
11 Facility is evidenced by several facts, including, but not limited to: Defendant's continued  
12 failure to review and revise its BMPs despite its continued discharge of storm water pollutants  
13 from the Facility at levels well in excess of EPA Benchmark Values and other applicable water  
14 quality criteria; Defendant's exposure of significant quantities of industrial material to storm  
15 water flows; and Defendant's failure to either treat storm water prior to discharge or to  
16 implement effective containment and pollution prevention practices.

17 59. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
18 require dischargers to reduce or prevent pollutants in their storm water discharges through  
19 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
20 pollutants. Defendant has failed to implement BAT and BCT at the Facility for its  
21 discharges of iron, TSS, Oil & grease, pH, specific conductance and other pollutants that  
22 Defendant has failed to monitor in violation of Effluent Limitation B(3) of the General  
23 Permit.

24 60. Defendant has failed to update the Facility's SWPPP and BMPs in response to  
25 the analytical results of the Facility's storm water monitoring. Defendant has failed to submit  
26 reports pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of  
27 levels in the Facility's storm water exceeding the EPA Benchmark Values and applicable  
28 water quality standards. Defendant has not filed any reports describing its noncompliance  
with the General Permit in violation of Section C(11)(d). Lastly, Defendant appears not to

1 have meaningfully altered the SWPPP and accompanying BMPs as a result of the annual  
2 evaluations required by Section A(9), with the exception of some minor changes.

3 61. Each day since October 1, 1992 that Defendant has failed to develop, implement  
4 and update an adequate SWPPP for the Facility and implement BAT and BCT is a separate and  
5 distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

6 62. Defendant has been in violation of the SWPPP and BAT/BCT requirements  
7 every day since October 1, 1992. Defendant continues to be in violation of the SWPPP  
8 requirement each day that it fails to develop and fully implement an adequate SWPPP for the  
9 Facility.

10 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program**  
13 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

14 63. Plaintiff realleges and incorporates Paragraphs 1-62, as if fully set forth herein.

15 64. Section B of the General Permit requires dischargers of storm water associated  
16 with industrial activity to develop and implement a monitoring and reporting program  
17 (including, among other things, sampling and analysis of discharges) no later than October 1,  
18 1992.

19 65. Defendant has failed to develop and implement an adequate monitoring and  
20 reporting program for the Facility. Defendant's ongoing failure to do so is evidenced by  
21 several facts, including, but not limited to: Defendant's failure to monitor for requisite  
22 pollution parameters in its storm water samples; Defendant's failure to collect storm water  
23 samples from at least two rain events each year from each designated discharge point;  
24 Defendant's failure to conduct monthly wet season observations at the Facility; and  
25 Defendant's failure to record the date and time of each required sampling and monitoring  
26 event.

27 66. Each day since October 1, 1992 that Defendant has failed to develop and  
28 implement an adequate monitoring and reporting program for the Facility in violation of the

1 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
2 1311(a). The continuing failure to develop and implement an adequate monitoring and  
3 reporting program for the Facility constitutes ongoing and continuous violations of the Act.

4 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

5 **VII. RELIEF REQUESTED**

6 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

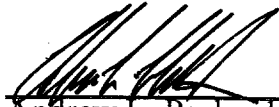
- 7 a. Declare Defendant to have violated and to be in violation of the Act as  
8 alleged herein;
- 9 b. Enjoin Defendant from discharging pollutants from the Facility and to the  
10 surface waters surrounding and downstream from the Facility;
- 11 c. Enjoin Defendant from further violating the substantive and procedural  
12 requirements of the General Permit;
- 13 d. Order Defendant to pay civil penalties of \$27,500 per day per violation for  
14 all violations occurring before March 15, 2004, and \$32,500 per day per violation for all  
15 violations occurring after March 15, 2004, for each violation of the Act pursuant to Sections  
16 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;
- 17 e. Order Defendant to take appropriate actions to restore the quality of  
18 navigable waters impaired by their activities;
- 19 f. Award Plaintiff costs (including reasonable investigative, attorney, witness,  
20 and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,
- 21 g. Award any such other and further relief as this Court may deem appropriate.

22 Dated: March 25, 2009

Respectfully submitted,

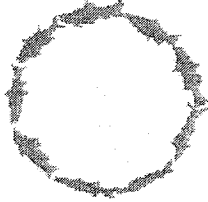
23 LAW OFFICES OF ANDREW L. PACKARD

24  
25 By:

  
26 Andrew L. Packard  
27 Attorneys for Plaintiff  
28 CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE



**EXHIBIT A**



**California Sportfishing Protection Alliance**

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

January 20, 2009

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. David King  
President, Castle & King Rock & Ready  
105 Aegean Way  
Vacaville, CA 95687

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

Dear Mr. King:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Castle & King, Inc. ("Castle & King") aggregate facility located at 105 Aegean Way in Vacaville, California ("the Facility"). The WDID identification number for the Facility is 5A48S002800. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Cache Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of Castle & King, Inc.

This letter addresses Castle & King's unlawful discharges of pollutants from the Facility to the storm water conveyance system for the city of Vacaville, which ultimately which flows into Alamo Creek, Cache Slough, the Sacramento River and the Sacramento - San Joaquin Delta). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit").

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("the EPA"), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Castle & King is hereby placed on formal notice by CSPA that,

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after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Castle & King under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

Castle & King, Inc. a ready-mix concrete facility located in Vacaville, California. The facility is used to receive, store, and transport aggregate materials for the manufacture of concrete. Other activities at the facility include the use, storage, and maintenance of heavy machinery and motorized vehicles, including trucks used to haul materials to and from the facility.

CSPA's investigator's have observed the facility from the adjacent street. The investigators noted that there are no berms or other storm water controls present to prevent run off from either driveway at the facility and that storm water most likely exits the facility in a sheet flow without any treatment, retention, or other pollution control measure in place. CSPA's investigators also observed that several kinds of aggregate materials were stored at the facility in areas exposed to rainfall without any observable storm water pollution control measures in place. Finally, the investigators also noted that several heavy trucks were parked at the facility without the use of drip pans to prevent automotive fluids from dripping onto the facility's pavement and subsequently being discharged during a rain event. CSPA is informed and believes that several pollutant sources at the facility—including sources of sediment-producing materials, metals, oils and greases, and other contaminants—are exposed to rainfall and that pollutants derived from these materials are discharged in storm water from the Facility.

On March 30, 1992 and again on June 13, 1997, Castle & King submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as a power generation facility under Standard Industrial Classification code 3273 ("Ready-mixed Concrete"). The Facility collects and discharges storm water from its two-acre industrial site through at least four discharge points to the local storm water conveyance system and/or Alamo Creek, all of which ultimately drain to Cache Slough, which is tributary to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). The Delta, the Sacramento River, and the creeks that receive storm water discharge from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the Sacramento River and the Delta in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human,

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plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the

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General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Castle & King: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200  $\mu\text{mho/cm}$ . Additional parameters for pollutants that CSPA believes are discharged from the Facility are: copper – 0.0636 mg/L; lead – 0.0816 mg/L; and zinc – 0.117 mg/L.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

Castle & King has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

On March 30, 2007, the Regional Water Quality Control Board sent Castle & King two Notices of Violation. The first informed Castle & King that it had submitted an incomplete or erroneous “Form 1” for storm water sampling and analysis. The second Notice of Violation noted that storm water discharges from the facility exceeded the U.S. EPA Benchmark Values and ordered Castle & King to: (1) Identify sources of pollutants at the Facility that contributed to the exceedance(s); (2) Review current BMPs; and (3) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants. The Regional board also requested that the Facility’s SWPPP be updated.

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Castle & King responded only by blaming the exceedances on local flooding. Based on its review of available public documents, CSPA is informed and believes that Castle & King failed to comply with the Board's Notice of Violation and that it failed to review its BMPs or to submit a revised SWPPP. CSPA is informed and believes that Castle & King has continued to operate in violation of the General Permit despite the Regional Board's inspection and notice of violation. Castle & King's ongoing violations are discussed further below.

**A. Castle & King Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

Castle & King has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (TSS), specific conductivity, and pH in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. Castle & King's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Castle & King Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of Applicable Water Quality Criteria.**

| Date       | Outfall       | Parameter | Concentration in Discharge | EPA Benchmark Value |
|------------|---------------|-----------|----------------------------|---------------------|
| 12/8/2007  | NW            | TSS       | 1000 mg/L                  | 100 mg/L            |
| 12/8/2007  | NE            | TSS       | 1300 mg/L                  | 100 mg/L            |
| 1/10/2008  | NE            | TSS       | 280 mg/L                   | 100 mg/L            |
| 5/2/2007   | NW            | TSS       | 310 mg/L                   | 100 mg/L            |
| 5/2/2007   | NW            | TSS       | 110 mg/L                   | 100 mg/L            |
| 3/20/2006  | North Outfall | TSS       | 1000 mg/L                  | 100 mg/L            |
| 11/11/2004 | NE            | TSS       | 830 mg/L                   | 100 mg/L            |
| 12/29/2003 | North outfall | TSS       | 1400 mg/L                  | 100 mg/L            |

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2. *Discharges of Storm Water Containing Specific Conductivity at Levels in Excess of Applicable Water Quality Criteria.*

| Date      | Outfall | Parameter  | Concentration in Discharge | Proposed Benchmark Value |
|-----------|---------|------------|----------------------------|--------------------------|
| 1/10/2008 | NW      | Spec. Con. | 230 µmho/cm                | 200 µmhos/cm             |
| 1/10/2008 | NE      | Spec. Con. | 280 µmho/cm                | 200 µmhos/cm             |
| 5/2/2007  | NE      | Spec. Con. | 400 µmho/cm                | 200 µmhos/cm             |
| 5/4/2007  | NE      | Spec. Con. | 260 µmho/cm                | 200 µmhos/cm             |

3. *Discharges of Storm Water with a pH in Excess of Applicable Water Quality Criteria.*

| Date       | Outfall | Parameter | Concentration in Discharge | EPA Benchmark Value |
|------------|---------|-----------|----------------------------|---------------------|
| 1/10/2008  | NW      | pH        | 9.79                       | 6.0 – 9.0           |
| 1/10/2008  | NE      | pH        | 9.08                       | 6.0 – 9.0           |
| 12/8/2007  | NE      | pH        | 9.56                       | 6.0 – 9.0           |
| 5/2/2007   | NE      | pH        | 9.73                       | 6.0 – 9.0           |
| 5/4/2007   | NE      | pH        | 9.19                       | 6.0 – 9.0           |
| 3/20/2006  | NW      | pH        | 9.28                       | 6.0 – 9.0           |
| 12/29/2003 | North   | pH        | 9.67                       | 6.0 – 9.0           |

CSPA’s investigation, including its review of Castle & King’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values and the State Board’s proposed benchmark for electrical conductivity, indicates that Castle & King has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, and unacceptable levels of pH, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Castle & King was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, Castle & King is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Castle & King has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least January 20, 2004. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since January 20, 2004, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Castle & King has discharged storm water containing impermissible levels of pH, TSS, and specific conductivity, and other un-monitored pollutants in violation of Discharge Prohibitions

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A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Castle & King is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since January 20, 2004.

**B. Castle & King Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as Castle & King, designated under SIC 3273 are also required to sample for iron. Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities."

Based on its investigation, CSPA is informed and believes that Castle & King has failed to develop and implement an adequate Monitoring & Reporting Plan. First, Castle & King has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, Castle & King has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Castle & King is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since January 20, 2004. These violations are set forth in greater detail below:



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**1. Castle & King Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that Castle & King has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. In its most recent Annual Report to the Regional Board, Castle & King stated that there are four discharge points at the Facility. (Castle & King, 2007-2008 Annual Report, at 2, item E.3). However, during the last five years, Castle & King has never collected storm water samples from Discharge Points Nos. 3 and 4. Moreover, Castle & King has averred that it has reduced its storm water sampling requirements because Discharge Points Nos. 3 and 4 are substantially similar to Discharge Points Nos. 1 and 2. Yet, Castle & King has failed to provide any documentation to support that assertion and has failed to note in the Annual Report the date of the most recent evaluation of the Discharge Points. (See, e.g., Castle & King, 2007-2008 Annual Report, at 3, item E.5).

Specifically, during the 2003-2004 wet season, Castle and King collected only one sample from the North Outfall and none from any of the other three outfalls at the Facility. During the 2004-2005, 2005-2006, and 2007-2008 wet seasons, Castle & King collected only one sample each season from the Northwest and Northeast Discharge Points, respectively, without providing adequate support for its assertion that the NW and NE Discharge Points are adequately representative of all discharge from the Facility.

During the 2006-2007 wet season, Castle & King collected two samples from the Northwest and Northeast outfalls, but none from the other outfalls. Moreover, Castle & King's second sample occurred on May 4, 2007, only two days after Castle & King's first sample for the season (taken on May 2, 2007). Therefore, the second rain event was not a "qualifying rain event" as required by Section B(5)(a) of the General Permit. Finally, CSPA is informed and believes that May 2, 2007 was not the first qualifying storm event for the season. Castle & King's failure to sample the first qualifying storm event constitutes another violation of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by Castle & King. Each of these failures to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

**2. Castle & King Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

Section B(5)(c)(i) of the General Industrial Storm Water Permit requires Castle & King to sample for total suspended solids, specific conductivity, pH, and oil & grease or

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total organic carbons. The General Permit also requires facilities such as Castle & King which are designated as SIC 3273 to analyze their storm water discharge for iron. Based on its review of available public documents, CSPA is informed and believes that Castle & King has never sampled for iron in its storm water discharge. Each

Finally, based on its investigation, CSPA is informed and believes that Castle & King has failed to monitor for at least eight other pollutants likely to be present in storm water discharges in significant quantities – aluminum, arsenic, chemical oxygen demand, chromium, copper, manganese, nickel, nitrate+nitrite, and zinc. Castle & King's failure to monitor these pollutants extends back at least until January 20, 2004. Castle & King's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. *Castle & King Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since January 20, 2004.***

CSPA is informed and believes that available documents demonstrate Castle & King's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Castle & King is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since January 20, 2004.

**C. *Castle & King Has Failed to Implement BAT and BCT.***

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that Castle & King has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, pH, iron and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, Castle & King must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Castle & King must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. Castle & King has failed to implement such measures adequately.

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Castle & King was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Castle & King has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that Castle & King fails to implement BAT and BCT. Castle & King is subject to penalties for violations of the Order and the Act occurring since January 20, 2004.

**D. Castle & King Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby waterbodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to

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the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedence of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Castle & King has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Castle & King has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Castle & King has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that Castle & King fails to develop and implement an effective SWPPP. Castle & King is subject to penalties for violations of the Order and the Act occurring since January 20, 2004.

**E. Castle & King Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, Castle & King is discharging elevated levels of total suspended solids, specific conductivity, and pH that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, Castle & King was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, Castle & King was aware of high levels of these pollutants prior to January 20, 2004. Likewise, Castle & King has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Castle & King has been in continuous violation of Receiving Water

Notice of Violation and Intent To File Suit  
January 20, 2009  
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Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since January 20, 2004, and will continue to be in violation every day that Castle & King fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Castle & King is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since January 20, 2004.

**F. Castle & King Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that Castle & King has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, Castle & King has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Castle & King has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Castle & King submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Castle & King's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Castle & King is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since January 20, 2004.

**III. Persons Responsible for the Violations.**

CSPA puts Castle & King, including Mr. David King, on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Castle & King on notice that it intends to include those persons in this action.

**IV. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

**V. Counsel.**

Notice of Violation and Intent To File Suit  
January 20, 2009  
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CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
Law Offices of Andrew L. Packard  
319 Pleasant Street  
Petaluma, California 94952  
(707) 763-7227

Michael R. Lozeau  
Law Office of Michael R. Lozeau  
1516 Oak Street, Suite 216  
Alameda, California 94501  
(510) 749-9102

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Castle & King to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Castle & King and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Pamela Creedon, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

**ATTACHMENT A**  
**Notice of Intent to File Suit, Castle & King (Vacaville, CA)**  
**Significant Rain Events,\* January 20, 2004-January 20, 2009**

|       |    |      |       |    |      |       |    |      |
|-------|----|------|-------|----|------|-------|----|------|
| Jan.  | 24 | 2004 | Feb.  | 27 | 2005 | March | 03 | 2006 |
| Jan.  | 27 | 2004 | Feb.  | 28 | 2005 | March | 05 | 2006 |
| Feb.  | 02 | 2004 | March | 02 | 2005 | March | 06 | 2006 |
| Feb.  | 03 | 2004 | March | 04 | 2005 | March | 07 | 2006 |
| Feb.  | 16 | 2004 | March | 19 | 2005 | March | 12 | 2006 |
| Feb.  | 17 | 2004 | March | 20 | 2005 | March | 13 | 2006 |
| Feb.  | 18 | 2004 | March | 22 | 2005 | March | 14 | 2006 |
| Feb.  | 21 | 2004 | March | 27 | 2005 | March | 17 | 2006 |
| Feb.  | 22 | 2004 | March | 28 | 2005 | March | 20 | 2006 |
| Feb.  | 25 | 2004 | April | 04 | 2005 | March | 24 | 2006 |
| Feb.  | 26 | 2004 | April | 08 | 2005 | March | 25 | 2006 |
| March | 01 | 2004 | April | 28 | 2005 | March | 27 | 2006 |
| March | 02 | 2004 | May   | 05 | 2005 | March | 28 | 2006 |
| March | 25 | 2004 | May   | 08 | 2005 | March | 29 | 2006 |
| Sep.  | 19 | 2004 | May   | 09 | 2005 | March | 31 | 2006 |
| Oct.  | 17 | 2004 | May   | 18 | 2005 | April | 03 | 2006 |
| Oct.  | 19 | 2004 | June  | 09 | 2005 | April | 04 | 2006 |
| Oct.  | 23 | 2004 | June  | 16 | 2005 | April | 07 | 2006 |
| Oct.  | 26 | 2004 | Nov.  | 07 | 2005 | April | 08 | 2006 |
| Nov.  | 04 | 2004 | Nov.  | 08 | 2005 | April | 11 | 2006 |
| Nov.  | 10 | 2004 | Nov.  | 25 | 2005 | April | 12 | 2006 |
| Nov.  | 11 | 2004 | Nov.  | 29 | 2005 | April | 16 | 2006 |
| Nov.  | 27 | 2004 | Dec.  | 01 | 2005 | May   | 21 | 2006 |
| Dec.  | 07 | 2004 | Dec.  | 02 | 2005 | May   | 22 | 2006 |
| Dec.  | 08 | 2004 | Dec.  | 17 | 2005 | Nov.  | 02 | 2006 |
| Dec.  | 09 | 2004 | Dec.  | 18 | 2005 | Nov.  | 11 | 2006 |
| Dec.  | 27 | 2004 | Dec.  | 19 | 2005 | Nov.  | 13 | 2006 |
| Dec.  | 28 | 2004 | Dec.  | 21 | 2005 | Nov.  | 14 | 2006 |
| Dec.  | 29 | 2004 | Dec.  | 22 | 2005 | Nov.  | 26 | 2006 |
| Dec.  | 30 | 2004 | Dec.  | 25 | 2005 | Dec.  | 09 | 2006 |
| Dec.  | 31 | 2004 | Dec.  | 26 | 2005 | Dec.  | 10 | 2006 |
| Jan.  | 01 | 2005 | Dec.  | 27 | 2005 | Dec.  | 12 | 2006 |
| Jan.  | 02 | 2005 | Dec.  | 28 | 2005 | Dec.  | 21 | 2006 |
| Jan.  | 03 | 2005 | Dec.  | 29 | 2005 | Dec.  | 22 | 2006 |
| Jan.  | 04 | 2005 | Dec.  | 30 | 2005 | Dec.  | 26 | 2006 |
| Jan.  | 07 | 2005 | Dec.  | 31 | 2005 | Dec.  | 27 | 2006 |
| Jan.  | 08 | 2005 | Jan.  | 01 | 2006 | Feb.  | 08 | 2007 |
| Jan.  | 09 | 2005 | Jan.  | 02 | 2006 | Feb.  | 09 | 2007 |
| Jan.  | 11 | 2005 | Jan.  | 03 | 2006 | Feb.  | 10 | 2007 |
| Jan.  | 25 | 2005 | Jan.  | 14 | 2006 | Feb.  | 11 | 2007 |
| Jan.  | 26 | 2005 | Jan.  | 18 | 2006 | Feb.  | 23 | 2007 |
| Jan.  | 28 | 2005 | Jan.  | 30 | 2006 | Feb.  | 25 | 2007 |
| Feb.  | 15 | 2005 | Feb.  | 17 | 2006 | Feb.  | 26 | 2007 |
| Feb.  | 16 | 2005 | Feb.  | 19 | 2006 | Feb.  | 27 | 2007 |
| Feb.  | 18 | 2005 | Feb.  | 26 | 2006 | April | 14 | 2007 |
| Feb.  | 19 | 2005 | Feb.  | 27 | 2006 | April | 15 | 2007 |
| Feb.  | 20 | 2005 | Feb.  | 28 | 2006 | April | 22 | 2007 |
| Feb.  | 21 | 2005 | March | 02 | 2006 | April | 23 | 2007 |

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.



**ATTACHMENT A**  
**Notice of Intent to File Suit, Castle & King (Vacaville, CA)**  
**Significant Rain Events,\* January 20, 2004-January 20, 2009**

|      |    |      |      |    |      |      |    |      |
|------|----|------|------|----|------|------|----|------|
| May  | 02 | 2007 | Jan. | 04 | 2008 | Feb. | 19 | 2008 |
| May  | 04 | 2007 | Jan. | 05 | 2008 | Feb. | 20 | 2008 |
| Sep. | 21 | 2007 | Jan. | 08 | 2008 | Feb. | 21 | 2008 |
| Oct. | 10 | 2007 | Jan. | 10 | 2008 | Feb. | 23 | 2008 |
| Oct. | 12 | 2007 | Jan. | 21 | 2008 | Feb. | 24 | 2008 |
| Oct. | 16 | 2007 | Jan. | 22 | 2008 | Oct. | 30 | 2008 |
| Nov. | 10 | 2007 | Jan. | 23 | 2008 | Oct. | 31 | 2008 |
| Nov. | 11 | 2007 | Jan. | 24 | 2008 | Nov. | 01 | 2008 |
| Dec. | 04 | 2007 | Jan. | 25 | 2008 | Nov. | 03 | 2008 |
| Dec. | 06 | 2007 | Jan. | 26 | 2008 | Nov. | 26 | 2008 |
| Dec. | 07 | 2007 | Jan. | 27 | 2008 | Dec. | 14 | 2008 |
| Dec. | 17 | 2007 | Jan. | 28 | 2008 | Dec. | 15 | 2008 |
| Dec. | 18 | 2007 | Jan. | 29 | 2008 | Dec. | 18 | 2008 |
| Dec. | 20 | 2007 | Jan. | 31 | 2008 | Dec. | 19 | 2008 |
| Dec. | 28 | 2007 | Feb. | 01 | 2008 | Dec. | 21 | 2008 |
| Dec. | 29 | 2007 | Feb. | 02 | 2008 | Dec. | 24 | 2008 |
| Jan. | 03 | 2008 | Feb. | 03 | 2008 | Dec. | 25 | 2008 |

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.